

APPEAL NO. 050979
FILED JUNE 6, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 24, 2005. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement (MMI) on March 2, 2004, with a 5% impairment rating (IR), as reported by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appeals, contending that he reached MMI on March 9, 2005, with a 10% IR. The respondent (carrier) requests affirmance.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the claimant's appeal was not timely filed with the Commission.

Section 410.202(a) provides that to appeal the decision of a hearing officer, a party shall file a written request for appeal with the Appeals Panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal or a response. Tex. W.C. Comm'n, 28 TEX. ADMIN CODE § 102.5(d) (Rule 102.5(d)) provides in pertinent part that for purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed. See *also* Rule 143.3(d)(1) which provides that the hearing officer's decision is deemed received five days after mailing, unless the great weight of the evidence indicates otherwise.

Commission records reflect that the hearing officer's decision was mailed to the claimant on March 31, 2005. The claimant does not state when the decision was received. Pursuant to Rules 102.5(d) and 143.3(d)(1), unless the great weight of the evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision on Tuesday, April 5, 2005. The 15th day after April 5, 2005, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was Wednesday, April 27, 2005. The claimant's appeal was faxed to the Commission on April 29, 2005. Because the claimant's appeal was filed with the Commission after April 27, 2005, it was not timely filed with the Commission. Section 410.169 provides in pertinent part that a decision of a hearing officer is final in the absence of a timely appeal by a party.

Having determined that the hearing officer's decision and order have become final under Section 410.169 because a timely appeal was not filed with the Commission, the Appeals Panel does not have jurisdiction to review the hearing officer's decision.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge